

## **IC 31-34-4**

### **Chapter 4. Temporary Placement of Child Taken Into Custody**

#### **IC 31-34-4-1**

##### **Application of chapter**

Sec. 1. This chapter applies only to a child alleged to be a child in need of services.

*As added by P.L.1-1997, SEC.17.*

#### **IC 31-34-4-2**

##### **Placement of child with relative caretaker; criminal history check required; exceptions**

Sec. 2. (a) If a child alleged to be a child in need of services is taken into custody under an order of the court under this chapter, the court shall consider placing the child with a suitable and willing blood or adoptive relative caretaker, including a grandparent, an aunt, an uncle, or an adult sibling, before considering any other out-of-home placement.

(b) Before placing a child in need of services with a blood relative or an adoptive relative caretaker, the court may order the division of family resources to:

- (1) complete a home study of the relative's home; and
- (2) provide the court with a placement recommendation.

(c) Except as provided in subsection (e), before placing a child in need of services in an out-of-home placement, including placement with a blood or an adoptive relative caretaker, the court shall order the division of family resources to conduct a criminal history check (as defined in IC 31-9-2-22.5) of each person who is:

- (1) currently residing in the location designated as the out-of-home placement; or
- (2) in the reasonable belief of the division of family resources, expected to be residing in the location designated as the out-of-home placement during the time the child would be placed in the location.

(d) Except as provided in subsection (f), a court may not order an out-of-home placement if a person described in subsection (c)(1) or (c)(2) has:

- (1) committed an act resulting in a substantiated report of child abuse or neglect; or
- (2) been convicted of a felony listed in IC 12-17.4-4-11 or had a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult.

(e) The court is not required to order the division of family resources to conduct a criminal history check under subsection (c) if the court orders an out-of-home placement to an entity or a facility that is not a residence (as defined in IC 3-5-2-42.5) or that is licensed by the state.

(f) A court may order an out-of-home placement if:

- (1) a person described in subsection (c)(1) or (c)(2) has:
  - (A) committed an act resulting in a substantiated report of

child abuse or neglect; or

(B) been convicted or had a juvenile adjudication for:

- (i) reckless homicide (IC 35-42-1-5);
- (ii) battery (IC 35-42-2-1) as a Class C or D felony;
- (iii) criminal confinement (IC 35-42-3-3) as a Class C or D felony;
- (iv) arson (IC 35-43-1-1) as a Class C or D felony;
- (v) a felony involving a weapon under IC 35-47 or IC 35-47.5 as a Class C or D felony;
- (vi) a felony relating to controlled substances under IC 35-48-4 as a Class C or D felony; or
- (vii) a felony that is substantially equivalent to a felony listed in items (i) through (vi) for which the conviction was entered in another state; and

(2) the court makes a written finding that the person's commission of the offense, delinquent act, or act of abuse or neglect described in subdivision (1) is not relevant to the person's present ability to care for a child, and that the placement is in the best interest of the child.

However, a court may not order an out-of-home placement if the person has been convicted of a felony listed in IC 12-17.4-4-11 that is not specifically excluded under subdivision (1)(B), or has a juvenile adjudication for an act that would be a felony listed in IC 12-17.4-4-11 if committed by an adult that is not specifically excluded under subdivision (1)(B).

(g) In making its written finding under subsection (f), the court shall consider the following:

- (1) The length of time since the person committed the offense, delinquent act, or abuse or neglect.
- (2) The severity of the offense, delinquent act, or abuse or neglect.
- (3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

*As added by P.L.1-1997, SEC.17. Amended by P.L.70-2004, SEC.18; P.L.234-2005, SEC.176.*

### **IC 31-34-4-3**

#### **Order to take child to designated place pending detention hearing**

Sec. 3. If a child is taken into custody under an order of the court, the law enforcement officer shall take the child to a place designated in the order to await a detention hearing.

*As added by P.L.1-1997, SEC.17.*

### **IC 31-34-4-4**

#### **Release, delivery, or detention of child taken into custody without court order**

Sec. 4. If a child is taken into custody without an order of the court, the person taking the child into custody:

- (1) may:
  - (A) release the child; or

- (B) deliver the child to a place designated by the juvenile court; and
- (2) if the child is detained, shall promptly notify the child's parent, guardian, or custodian and an intake officer:
  - (A) that the child is being held; and
  - (B) of the reasons for the child's detention.

*As added by P.L.1-1997, SEC.17.*

#### **IC 31-34-4-5**

##### **Investigation, release, or detention by intake officer of child taken into custody without court order**

Sec. 5. If the child was not taken into custody under an order of the court, the intake officer shall investigate the reasons for the child's detention. The intake officer shall release the child to the child's parent, guardian, or custodian upon the person's written promise to bring the child before the juvenile court at a time specified. However, the intake officer may place the child in detention if the intake officer reasonably believes that the child is a child in need of services and that:

- (1) detention is necessary to protect the child;
- (2) the child is unlikely to appear before the juvenile court for subsequent proceedings;
- (3) the child has a reasonable basis for requesting that the child not be released; or
- (4) the parent, guardian, or custodian:
  - (A) cannot be located; or
  - (B) is unable or unwilling to take custody of the child.

*As added by P.L.1-1997, SEC.17.*

#### **IC 31-34-4-6**

##### **Duty to inform parent, custodian, or guardian of legal rights**

Sec. 6. (a) The county office of family and children shall submit written information to a parent, custodian, or guardian of a child who is alleged to be abused or neglected regarding the following legal rights of the parent, custodian, or guardian:

- (1) The right to have a detention hearing held by a court within forty-eight (48) hours after the child's removal from the home and to request return of the child at the hearing.
- (2) The right to:
  - (A) be represented by an attorney;
  - (B) cross examine witnesses; and
  - (C) present evidence on the parent's, custodian's, or guardian's own behalf;

at each court proceeding on a petition alleging that the child is a child in need of services. The parent, guardian, or custodian has the right to be represented by a court appointed attorney under clause (A) upon the request of the parent, guardian, or custodian if the court finds that the parent, guardian, or custodian does not have sufficient financial means for obtaining representation as described in IC 34-1-1-3.

(3) The right not to make statements that incriminate the parent, custodian, or guardian and that an incriminating statement may be used during a court proceeding on a petition alleging that the child is a child in need of services.

(4) The right to request to have the case reviewed by the child protection team under IC 31-33-3-6.

(5) The right to be advised that after July 1, 1999, a petition to terminate the parent-child relationship must be filed whenever a child has been removed from the child's parent and has been under the supervision of the county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months.

(b) The county office of family and children shall submit the written information under subsection (a) to the child's parent, guardian, or custodian at the time:

(1) the child is taken into custody; or

(2) the county office of family and children files a petition alleging that the child is a child in need of services;

whichever occurs earlier.

*As added by P.L.1-1997, SEC.17. Amended by P.L.35-1998, SEC.5.*